



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

November 18, 2004

Ms. Rebecca Brewer  
Abernathy Roeder Boyd & Joplin, P.C.  
Attorneys at Law  
P.O. Box 1210  
McKinney, Texas 75070-1210

OR2004-9800

Dear Ms. Brewer:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 213282.

The City of Frisco (the "city"), which you represent, received a request for "police reports and incidents relating to neglect or abuse of residents/patients occurring at [a specified address]" for a specified time period and for any citations issued by the city related to use of the property. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that you did not submit any citations issued by the city related to use of the property for our review. Further, you have not indicated that such information does not exist or that you wish to withhold any such information from disclosure. Therefore, to the extent information responsive to this aspect of the request existed on the date the city received the instant request, we assume that you have released it to the requestor. If you have not released any such information, you must release it to the requestor at this time. *See* Gov't Code §§ 552.301(a), .302; Open Records Decision No. 664 (2000) (noting that if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible under circumstances).

You claim that the submitted information is confidential under section 552.101 of the Government Code, which excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. You raise section 48.101 of the Human Resources Code, which pertains to reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 provides, in relevant part, as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

- (1) a report of abuse, neglect, or exploitation made under this chapter;
- (2) the identity of the person making the report; and
- (3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

Hum. Res. Code § 48.101(a) - (b). Section 48.051 of the Human resources Code provides that “a person having cause to believe that an elderly or disabled person is in the state of abuse, neglect, or exploitation” shall report certain prescribed information to the Texas Department of Family and Protective Services (“DFPS”) or another appropriate state agency.<sup>1</sup> *See id.* § 48.051(a). The only entities authorized to conduct an investigation under chapter 48 of the Human Resources Code are DFPS and certain other state agencies, depending on the circumstances surrounding the incident. *See* Hum. Res. Code §§ 48.151, 48.152, 48.252, 48.301. The submitted information relates to the Frisco Police Department’s investigation of an injury to an elderly person. You state that the submitted information was used by Texas Department of Human Services in a chapter 48 investigation. Further, you have provided an affidavit of a program manager with the Regulatory Services Section of the Texas Department of Aging and Disability Services (“TDADS”), an agency formerly known as the Texas Department of Human Services, in which the affiant indicates that TDADS is authorized to conduct investigations under chapter 48 of the Human Resources Code, and

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<sup>1</sup> *See* Act of June 2, 2003, 78th Leg., R.S., ch. 198, § 1.27, 2003 Tex. Gen. Laws 611, 641 (“A reference in law to the Department of Protective and Regulatory Service means the Department of Family and Protective Services.”).

that TDADS is currently investigating this alleged incident. Based on your representations and our review of the submitted information, we find that the information constitutes a report used or developed in an investigation made under chapter 48 of the Human Resources Code. *See* Hum. Res. Code § 48.151. Such information must not be released to the public, except for a purpose consistent with chapter 48 of the Human Resources Code or as provided by a DPRS or investigating state agency rule or federal law. *See id.* § 48.101(b). *But see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances); 25 T.A.C. § 1.207. Upon review, we agree that the department must withhold the requested information under section 552.101 of the Government Code in conjunction with section 48.101 of the Human Resources Code. As our ruling is dispositive, we need not address your remaining arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

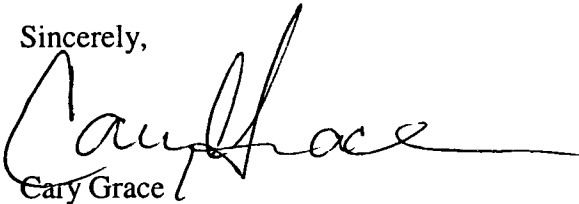
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cary Grace', with a long horizontal flourish extending to the right.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/jev

Ref: ID# 213282

Enc. Submitted documents

c: Ms. Vanessa Burch  
7301 North State Highway 161, Suite 360  
Irving, Texas 75039  
(w/o enclosures)